

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUNIZ, MARCUS
MARTIN, NATALIE ROMERO, CHELSEA
ALVARADO, JOHN DOE, and THOMAS
BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

**PLAINTIFFS' MOTION TO DEEM ESTABLISHED THAT
DEFENDANTS ELLIOTT KLINE AND ROBERT "AZZMADOR" RAY
COMMITTED CERTAIN SPECIFIC OVERT ACTS**

At the invitation of the Court, Plaintiffs respectfully move for an order deeming established that Defendants Elliott Kline and Robert "Azzmador" Ray each committed a *specific* overt act in furtherance of the conspiracy to commit racially motivated violence.

BACKGROUND

As detailed extensively in several of the Court's prior opinions, Defendants Elliott Kline and Robert "Azzmador" Ray spent virtually all of the pre-trial proceedings engaging in serious discovery misconduct and eventually disappearing from the litigation altogether. Indeed, Judge Moon has previously observed that he has "spent more time on" discovery issues caused by Kline's misconduct "than on all the other cases [he has] ever had . . . in 22 years." Mem. Op. & Order, ECF No. 910 at 33 (Nov. 30, 2020). Similarly, this Court has explained that "Ray's repeated and

ongoing discovery misconduct throughout this litigation . . . has caused significant procedural and substantive prejudice to Plaintiffs’ ability to resolve their claims in a just, speedy, and inexpensive manner.” Mem. Op. & Order, ECF No. 1106 at 12 (Sept. 22, 2021) (quotation marks and citations omitted). To remedy the evidentiary gaps and severe prejudice caused by that misconduct, Plaintiffs sought and obtained evidentiary sanctions, including, as relevant here, orders by the Court deeming certain facts established against Defendants Kline and Ray for the purposes of the action. *See* ECF No. 910 at 39-41; ECF No. 1106 at 15-16.

Although the Court granted most of the relief Plaintiffs sought, it denied without prejudice certain other requests. As relevant here, the Court denied without prejudice Plaintiffs’ requests for the Court to deem established that Kline and Ray each “committed multiple overt acts in furtherance of the conspiracy.” ECF No. 910 at 41; ECF No. 1106 at 6. In denying that relief without prejudice, the Court explained that Plaintiffs’ proposed language was insufficiently specific or was unsupported by the evidentiary submissions Plaintiffs offered at the time. *See* ECF No. 910 at 41; ECF No. 1106 at 16-17. Importantly, the Court held that “Plaintiffs may resubmit for the Court’s consideration proposed findings that Kline committed *specific* overt acts or acts of intimidation and violence in furtherance of the agreement to commit racially-motivated violence.” ECF No. 910 at 41-42. Similarly, the Court held that the “same result is warranted” as to Ray. ECF No. 1106 at 16 (denying certain aspects of Plaintiffs’ request “without prejudice”). Plaintiffs accordingly file the instant motion, requesting that the Court deem established that Ray and Kline each committed a *specific* overt act in furtherance of the conspiracy.

PROPOSED FINDINGS

I. Ray Indiscriminately Maced Counter Protestors on August 11, 2017.

As to Ray, Plaintiffs request that the Court deem established the following fact: While attending the torchlight march on August 11, 2017, Ray maliciously and indiscriminately maced several counter protestors, and, in doing so, committed an overt act in furtherance of the conspiracy to commit racially motivated violence in Charlottesville, Virginia on August 11-12, 2017.

This fact is specific—it alleges a particular overt act that Ray committed—and it is amply supported by the evidentiary record. Indeed, there can be no reasonable dispute that Ray indiscriminately maced counter-protestors at the August 11, 2017, torchlight march. For example, the record contains a video of Ray gloating that, at the August 11 march, he “personally, literally gassed half a dozen kikes.” Pls.’ Mot. in Limine for the Court to Deem Authentic Certain Photographs and Videos Depicting Robert “Azzmador” Ray, ECF No. 1149 at 4 (citing Pls.’ Ex. 2112 at 00:14-00:25). The record also contains several photos which depict Ray holding a torch and indiscriminately macing counter-protestors who are standing several yards away, with their backs against the Thomas Jefferson statue. *Id.* at 5 (citing Pls.’ Exs. 2805, 2810). Ray also remains a fugitive from criminal charges for maliciously releasing gas at Unite the Right’s torchlight rally. *See* Pls.’ Mot. for Evid. Sanctions Against Def. Robert “Azzmador” Ray, ECF No. 750 at 4 (citing Ex. E, “Case/Charge Information,” Albemarle Circuit Court, Case CR18000597-00).

In addition, the evidentiary record plainly demonstrates that Ray’s macing of counter protestors was intended to further the conspiracy. *See* Pls.’ 2d. Mot. for Evid. Sanctions Against Def. Robert “Azzmador” Ray, ECF No. 1028 at 5-6 (citing Discord posts from Ray discussing his plans to mace counter protestors); *see also* Mem. Op., ECF No. 335 at 42 (July 9, 2018) (holding

that Plaintiffs alleged injuries resulting from being pepper-sprayed and assaulted at the base of the Thomas Jefferson statue on the night of August 11, 2017, “were reasonably foreseeable consequences of the Defendants’ conspiracy”). Tellingly, Ray repeatedly and enthusiastically told other conspirators, via Discord, that he planned to mace counter protestors during the march. Or, to put that in Ray’s words, the “plan is the same, gas the kikes, pr war now, plenty of trolling and lulz.” ECF No. 1028 at 5-6 (citing Ex. D, 2017-07-28 Discord Post by Ray); *see also id.* (citing Ex. E, 2017-07-27 Discord Post by Ray) (Ray gloating, on Discord, that he “and some of the other Daily Stormer guys [would be] out front with a big bully squad hogging all the attention & gassing all the kikes.”).

II. Kline Directed and Participated in an Assault On a Counter Protestor on August 12, 2017.

As to Kline, Plaintiffs request that the Court deem established the following fact: On August 12, 2017, Kline directed other marchers into physical assaults, violence, and intimidation against counter protestors. Kline also participated in that violence by assisting Ben Daley in an attack on a counter-protestor; more specifically, Kline threw an already bleeding counter protestor into the pavement. In doing so, Kline committed an overt act in furtherance of the conspiracy to commit racially motivated violence at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.

There can be no reasonable dispute that this specific act, which is corroborated by a video exhibit accompanying this motion, occurred, and that it was an act taken in furtherance of the conspiracy to commit racially motivated violence. *See* Pls.’ Ex. 1987 at 00:00-01:42 (Kline directing a group of marchers); *id.* at 01:46-01:48 (Daley and Kline’s assault); *id.* at 01:50:01:52 (counter protestor’s bleeding face). Indeed, this act was consistent with Kline’s prediction, in the Discord chat, weeks before the event, that he and his co-conspirators were “gonna see some serious

brawls at cville [sic] next month” and “see blood on some of th[eir] white polos lol.” Pls.’ Ex. 0727 (2017-07-20 Discord Post by Kline). It also aligns with Kline’s “self-proclaimed role as ‘command soldier major of the alt-right.’” ECF No. 335 at 34. As Kline himself admitted, he was “a leader on the ground” and “frontline commander at UTR,” who was “yelling out orders” and directing his confederates to action. *See* Ex. A (Dep. of E. Kline at 424:16-25 (August 12, 2020)). Consistent with his self-appointed role, the video exhibit demonstrates Kline leading the charge and assisting in the violence of his confederates.

* * *

The Court previously held that Plaintiffs may resubmit for the Court’s consideration proposed findings that Kline and Ray committed *specific* overt acts or acts of intimidation and violence in furtherance of the agreement to commit racially motivated violence. Consistent with that instruction, both of the overt acts detailed in this motion are described with specificity and amply supported by the evidentiary record. The motion should be granted.

CONCLUSION

For the foregoing reasons, the Court should enter an order deeming that the following facts be taken as established against Defendant Robert “Azzmador” Ray and Elliot Kline, respectively, for the purposes of this action:

1. While attending the torchlight march on August 11, 2017, Ray maliciously and indiscriminately maced several counter protestors, and, in doing so, committed an overt act in furtherance of the conspiracy to commit racially motivated violence at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.
2. On August 12, 2017, Kline directed other marchers into physical assaults, violence, and intimidation against counter protestors. Kline also participated in that violence by

assisting Ben Daley in an attack on a counter protestor; more specifically, Kline threw an already bleeding counter protestor into the pavement. In doing so, Kline committed an overt act in furtherance of the conspiracy to commit racially motivated violence at the Unite the Right event in Charlottesville, Virginia on August 12, 2017.

Dated: October 19, 2021

Respectfully submitted,

/s/ Jessica Phillips

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